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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,482	01/23/2001	Greg Wiggins	55994.0129	1535
57600 7590 11/13/2008 HOLLAND & HART LLP 60 E. South Temple, Suite 2000 P.O. Box 11583 Salt Lake City, UT 84110			EXAMINER VO, TED T	
			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/768,482

Applicant(s)

WIGGINS ET AL.

Examiner

TED T. VO

Art Unit

2191

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,10-18 and 21-25 is/are pending in the application.
- 4a) Of the above claim(s) 23-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,10-18,21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. This is in response to the amendment filed on 08/01/08.

Claims 23-25 are withdrawn. Claims 1, 3-7, 10-18, 21-25 are pending.

The Office action is non-final because of presenting a new ground of rejection in the action.

Response to Arguments

2. This is in response to the remarks filed on 08/01/2008.

The arguments are not persuasive.

Regarding the Applicants argument to the elections/restriction to the claims 23-25: Applicants argument fail to point out where the claims are in the same mode as the scope of the claims that is elected as original filing.

Regard to the argument of claims rejected under 35 USC second paragraph, Applicants argue the claimed language "console", but fail to point out its meaning. It is proper to address the rejection under 35 USC 112 first paragraph. Under 35 USC 112 first paragraph, it requires the disclosure providing the written description and enablement support for specific claim element(s). Examiner fails to find the utilities that describe the claimed terms "console", and "said console configured to scan said first computer" in the specification and how they do in term

of the scope recited in the claims. The specification appears use “console” such as it has in Figure 2, but there is no description for the functionality of the console.

On the other hand, Applicants' remarks that WinZip fails to teach a console configured to “scan a computer” or “an application interface file”. Such argument is improper because the specification also fails to do so.

As noted, the term “console”, the specification clearly uses it without any description. It is a plain. For the term “scan said first computer”, it is only a term used without describing in the specification how the computer is scanned. The claimed language appears use the mental language that is said common in the art. For example, it is easily for a computer user says “scan the computer for a file”, but he never mention which program use to scan, and how it does. Thus, the claimed language is a vague because it tend to embrace the common thing. Therefore, console and scanning will be addressed in this action as being indefinite. Examiner **requests applicant for explanation, give their specific the meanings of claimed limitations.**

The functionality from the limitations reads on the acts obtained from the reference, but the Applicants' remarks contends the differences. Therefore, it is improper for an argument that fails to clarify from its own terms.

As mentioned in the previous action about console, the definition of Console depicting from Microsoft dictionary covers the WinZip features.

- Console: A control unit, such as terminal, through with a user communicates with a computer. In the microcomputer, the console is the cabinet that houses the main components and controls the system, sometimes including the screen, the keyboard, or both. With the MS-DOS operating system, the console is the primary input (keyboard) and primary output device (screen), as evidenced by the name CON.

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- CON: The logical device name for console, reserved by the MS-DOS operating system for the keyboard and the screen. The input-only keyboard and output-only screen together make-up the console and represent the primary sources of the input and output in an MS-DOS computer system.

While Applicants argued that the Microsoft and Nico Mak do not disclose “console”, their specification does not make any details “console”. Thus section 112 first and second paragraphs will be applied.

Applicants also argue WinZip does not teach “scan the computer”, but their specification does not show how it does, the section 112 first and second paragraphs also be applied.

Election/Restrictions

3. Claims 23-25 are subject to restriction and election requirement. See 37 CFR 1.142(b) and MPEP § 821.03. The claims are withdrawn by Applicants. The claims 23-35 remain pending in this application. The election/restriction remains being effective on these claims.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 4-7, 10-18 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The description for “console”, “scan a computer” are critical or essential to the practice of the invention. These underscored elements are used in the claims:

Claims 1, 4-7, 10-18 recite the claimed elements within the recitation, “(3) a console in communication with said application interface file, said console configured to scan said first computer for said files and settings to be migrated to said second computer;

but not described in the specification for how they look like and how they do in supporting the claims. In the specification, it replies only on the word “console” in the Figure 2 without any defining the meaning of console. The term “*said console configured to scan said first computer*” is a mere abstract idea, and it does not show how a computer is scanned. On the other hand, Applicants use these elements for the claimed limitations and deny any citations from references. This rejection is proper for that Applicants do not show the meaning and fail to provide utility for the claims.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1, 4-7, 10-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims recite the claimed language, “*Console*”, “*said console configured to scan said first computer*”, but the specification does not have specific teaching. The term “*console*” recited in the claims is vague and ambiguous in comparing to the word console defined in a standard dictionary.

The use of the console in the specification is not descriptive. Since a standard Microsoft Windows with programs that make WinZip of the reference meets “console” defined in the standard dictionary; these elements together are acting “console”. Because Applicants’ specification is not descriptive, and their denial of the examiner’ citation, the application’s console is not clearly, whether it is the same with the standard console as shown by the Microsoft that embeds WinZip as seen common in the art or not.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 3-7, 10-18, 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nico Mak's computing, inc, "WinZip Version 7.0" (Hereinafter: Nico Mak) and O'Connell, "Go Inside WinZip 7.0" (hereinafter: O'Connell), in view of Network Associates, Inc., (hereinafter: NA), "Total Virus Defense Suite - Best Practices Guide - Migration Technical Manual" Version 4.x family products, pages: i-x, 1-248, 5-1999.

As per Claim 1: The **WinZip application** as in Nico Mak and O'Connell discloses,

A system for describing and extracting application information, comprising:

(A) a first computer system, said first computer system further comprising:(1) an input device; (2) a display device; and (3) a processing unit, said processing unit further comprising:(a) a processor;(b) memory; and(c) a long-term storage device; (computer per se)

(B) a second computer system, said second computer system further comprising:(1) an input device; (2) a display device; and (3) a processing unit, said processing unit further

comprising:(a) a processor;(b) memory; and(c) a long-term storage device; (computer per se)

(C) a first version of an application program resident on said long term storage device of said processing unit of said first computer system (For example, a WinZip application, where this one can be obtained from WinZip.com, installed and linked with the file system of a computer).

(D) a second version of said application program resident on said long term storage device of said processing unit of said second computer system (For example, another WinZip application, where this one can be obtained from WinZip.com, installed and linked with the file system of another computer).

(E) means for migrating files and settings associated with said application program from said first computer (Every computer connected with a network providing migrating files):

(1) an application interface file identifying how to covert said settings from said first version to said second version of said application program (It is in a self extract WinZip file, sent from a computer to another computer, this file provide features as discussed in WinZip Version 7.0 of Nico Mak, such as an .ini file or using registry (p.1));

(2) a communication channel between said first computer system and said second computer system (Refer to Internet connected between two computers, however, it in the self extract WinZip application, that provides connection to a HTTP protocol for other computer communications);

(3) a console (refer to WinZip file, but will be applied to NA as being obvious for including) **in communication with said application interface file** (See WinZip7.0; the registry

setting allows the WinZip directly communicates to any file in the Windows and the WINZIP, and thus allows users to select files (i.e., scanning) into the self-extracting WinZip file for sending to another computer; or the functionality of the self-extracting when it allows the user to extraction (i.e. scanning) files by sorting the files in the ZinWip file and place the files in a directory in the computer. For example it is the “WinZip directory that is set by the registry key HKEY_CURRENT_USER/Software/Nico_Mak_Computing/WinZip (This teaching scanning the computer for devices, because it drives directly to the Windows' registry). The fact is the WinZip allows extracting files to any directory based on the user choice.), *said console configured to scan said first computer for said files and settings to be migrated to said second computer* (acting of self-extracting, this is disclosed by the WinZip functionally run when it is chosen as “extracting” given on the WinZip Toolbars); *and*

(4) a self-extracting auto-migration package built by said console said self-extracting auto-migration package further comprising files and self-extracting auto-migration package further comprising said files and settings for migration to said second computer (that is any .ZIP file created by WinZip 7.0), *said self-extracting auto-migration package configured to update said second version of said application program with said files and settings of said first version* (Simply run the Extract button in the WinZip file that is received from the first computer).

Nico Mak and O'Connell do not explicitly mention the words “console” and “scanning”

However, the descriptions of WinZip and the work in which it performs as self-extracting is inherently to the word “console” and “scanning”, because self-extracting is the act for scanning a file in a Zip file and auto copying it into a directory one by one.

- To disclose for this inherent acts of using a console for scanning computer before migrating files from an UnZip package to the computer,

NA discloses performing the scan of all the drives available to the system (See p. 81, Table C-2: /ALLDRIVES or /AD, or p. 82, ?LC). In a description for the reference for file migration, NA provides .INI files that run in a computer for a configuration setup (See p. 39) The INI files are as a requirement for scanning the computer before performing self-extracting files (see the script start from p. 98 to p. 110). The reference al so provides various scanning including to scan the registry for setting up file migration (i.e. File: Migration Technical Manual).

It is obvious to the ordinary in the art to combine the teachings of Nico Mak and O'Connell as one because they both discuss WinZip from Nico Mak and its features for self-extracting, and it is obvious to ordinary in the art for combining with NA which discloses file migrating into a computer system. The Migration Technical Manual of NA discloses some files are extracted from a Zip file by using "Console" (Windows and commands) for scanning the computer; the purpose is to configure the computer for setting files in an appropriate location in the computer, where such a configuration is conforming to the requirement of a computer for putting in the system as required by Microsoft Windows. Such combining clearly yield a predictable result to an ordinary in the art.

As per Claim 4: Nico Mak discloses the WinZip with Drag and Drop, "File Properties" for creating self-extractor packages.

As per Claim 5: Nico Mak discloses the WinZip which is adaptable to a standard Window like Window 95, editable by a “File Properties”.

As per Claim 6: With regard to limitation of Claim 6, see all commands shown in page 2.

As per Claim 7: With regard to limitation of Claim 7, Self-Extracting Zip file is an executable file.

As per Claim 10: With regard to limitation of Claim 10, see page 2, “move”, “Add”, “Drop”, “File Properties”, allowing a user to edit a file.

As per Claim 11: With regard to limitation of Claim 11, see page 13, Wizip.com provides password to it customer.

As per Claim 12: With regard to limitation of Claim 12, ZIP file is a compressed package.

As per Claim 13: With regard to limitation of Claim 13, Buttons EXTRACT in the ZIP file.

As per Claim 14: With regard to limitation of Claim 14, associated with Windows commands.

As per Claim 15: With regard to limitation of Claim 15, the text area in any WinZip file. It should be noted that it is adaptable from Microsoft Windows feature.

As per Claim 16: With regard to limitation of Claim 16, commands such as “Add”, “Drop”, “Clipboard Copy”, allow a file to be copied and migrated in the Self-Extractor or deleted when they are duplicated. Furthermore, this reference is associated with Microsoft Windows that is included with Windows console commands, i.e., when drop a file in to a

directory or a text area or a .ZIP file, if the drop file is in there, Windows console command always comes up with a warning question.

As per Claim 17: With regard to limitation of Claim 17, refer self-extracting in the reference.

As per Claim 18: Nico Mak and O'Connell do not express show Self-extracting auto-migration package further comprises "*user-defined profiles*"

Official notice is taken that User-defined profiles recited in the claim is only data limitation that is included but does nothing in the claim.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of invention was made to include information file, data file, as part of compressed files in a package.

As per Claim 3: Nico Mak inc., and O'Connell, disclose

A method for extracting and migrating application information, comprising:

(A) loading a Personality Package corresponding to a user (Created a WinZip file that is used to sent to a user), ***said Personality Package comprising user settings, user preferences, application programs and data files for migration from a source computer to a destination computer*** (all the content used to packed in the WinZip file; i.e. a created zipped file having, "Something or Other zip"), ***said Personality Package corresponding to specified application versions*** (i.e. a package of an application used to stored in a directory such as seen in O'Connell, p. 4);

(B) executing said Personality Package; (C) getting a file; (D) copying said file, and determining whether migration of additional files is required and if additional files are required returning to said getting a file step (See O'Connell, an execution on "Extract"

providing the user to determine how to do. It is merely a manual act, using basic operating commands in Windows to perform);

(E) getting a registry; (F) copying said registry (As mentioned, for install an application, in a Windows, the registry needs to update. See WinZip7.0, features such as copy all ini entries);

(G) getting application version specifics, and testing to determine if destination application versions in said destination computer match said application versions specified in said Personality Package, and generating an error if said destination application versions do not match (Nico Mak, provides configuration that improves a user manually installing the features of the WinZip application into a computer. Where installing error is generated based on the Windows operating system, the act of getting application version specifics is only a manual act performed by a user);
and (H) updating links (See WINZIP7.0, updating the registry key ('*shell link*').

Nico Mak and O'Connell, do not explicitly mention source computer, destination computer, but a WinZip package located at a destination computer of a user. They do not express say depict a file, and testing to determine if destination application versions in said destination computer match said application versions specified in said Personality Package, and generating an error if said destination application versions do not match

To disclose for this inherent acts of source computer, destination computer, depict a file, and “testing to determining”, and the description of communication devices in a computers for migrating a file from a computer to another,

NA discloses file migration to form A McAfee to “your computer” (e.g. migrate a virusScan 3.x from a server to a workstation (p. 54:AutoUpdate). See p. 32-42: management setup migration from Edition 1.51 to 2.0); discloses depicting a file (e.g. .DAT file) and test strategy for migration (p.32: “Management Edition”, p. 65-66, p. 230: test file with True/False, etc, and instructions used by a console in order to configure files and versions existing in the system (p. 224-229).

It is obvious to the ordinary in the art to combine the teachings of Nico Mak and O’Connell as one because they both discuss WinZip from Nico Mak and its features for self-extracting, and it is obvious to ordinary in the art for combining with NA which discloses file migrating into a computer system. The Migration Technical Manual of NA discloses some testing technique by using scripts instruction for comparing the name existences/versions and using true/false that is standardized by basis commands for scanning the computer; and thus determining the configuration in the computer and file migration. The purpose is to configure the computer for setting files into an appropriate location in the computer, where such a configuration is conforming to the requirement for putting the files in the system as required by Microsoft Windows.

Such combining clearly yield a predictable result to an ordinary in the art.

As per claim 21: *The method of claim 3, further comprising: determining whether said file is a shell link; and if said file is a shell link, adding said file to a shell link list* (see WINZIP7.0 or WINZIP are embedded in Windows, where shell links is part of the Windows operating system – For example, make a shortcut of a WinZip file in a desktop has means of creating a shell link list, where shell link provides a user interfaces WINZIP from everywhere; particularly from the desktop of the Windows).

As per claim 22: *The method of claim 21, further comprising updating shell links in said destination computer using said shell link list* (see WINZIP 7.0 or WINZIP are embedded in Windows, where shell links is part of the Windows operating system).

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ted T. Vo whose telephone number is (571) 272-3706. The examiner can normally be reached on 8:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708.

The facsimile number for the organization where this application or proceeding is assigned is the Central Facsimile number **571-273-8300**.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: 571-272-2100. Information regarding the status of

an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TTV
November 6, 2008

/Ted T. Vo/
Primary Examiner, Art Unit 2191